


UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

**FILED**

JAN 19 2021

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY  DEPUTY CLERK

UNITED STATES OF AMERICA

v.

Juan Ramon Hernandez-Limon

§  
§  
§  
§

SA-20-CR-00437(1)-OLG

**REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

**To the Honorable United States District Judge:**

Pursuant to the referral by the district judge, the defendant, defendant's attorney and the attorney for the government appeared before the undersigned magistrate judge on **January 19, 2021**, for the purpose of defendant's entry of a plea of guilty and consideration of a proffered waiver of defendant presence and allocution at the sentencing hearing.

**I. DEFENDANT'S GUILTY PLEA COLLOQUY**

At the hearing, defendant entered a guilty plea as stated in the record. The magistrate judge addressed the defendant personally in open court and, after assuring that defendant was competent to proceed and had consented to pleading guilty before a magistrate judge, admonished the defendant in accordance with Federal Rule of Criminal Procedure 11 of the nature of the charge, the possible penalties, defendant's constitutional and statutory rights, and the consequences of pleading guilty. Defendant acknowledged understanding these admonishments. The undersigned also addressed defendant concerning the voluntariness of the guilty plea. Finally, the undersigned assured the existence of a factual basis for the guilty plea.

Based upon the answers to the undersigned's questions from defendant and from counsel, the undersigned magistrate judge makes the following findings:

1. the defendant is competent to stand trial;
2. the defendant has consented to plead guilty before a magistrate judge;
3. the defendant fully understands the nature of the charge and the penalties;
4. the defendant understands defendant's constitutional and statutory rights and desires to waive them;
5. the defendant's plea is freely, knowingly and voluntarily made; and
6. there is a factual basis for the plea.

**II. DEFENDANT'S WAIVER OF RIGHT TO BE PRESENT AT SENTENCING AND  
WAIVER OF RIGHT TO ALLOCUTE**

Federal Rule of Criminal Procedure 43 provides a defendant the right to be present at sentencing. FED. R. CRIM. P. 43(a)(3). However, the Rule allows a defendant who pleaded guilty in a noncapital case to waive his or her right to be present at sentencing. FED. R. CRIM. P.

43(c)(1)(B) (describing waiver when a defendant is “voluntarily absent during sentencing”). “If the defendant waives the right to be present, the trial may proceed to completion, including ... sentencing, during the defendant’s absence.” FED. R. CRIM. P. 43(c)(2).

At the hearing before the magistrate judge, the defendant, after conferring with counsel, waived the right to be present at sentencing. Given the outbreak of the novel coronavirus, the defendant asked to minimize contact with others, consistent with federal, state, and local guidance. The defendant acknowledged his right to speak and present information to mitigate sentencing. *See* FED. R. CRIM. P. 32(i)(4)(A)(ii). The defendant waived this right in open court. The defendant indicated that he has spoken with counsel about mitigating information and was satisfied that counsel will present this information to the court.

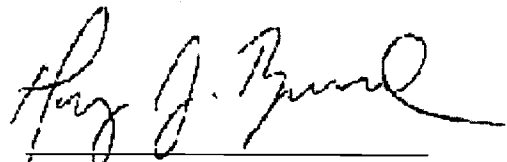
The defendant and counsel affixed their signatures to a waiver form in order to demonstrate voluntary and knowing assent to this waiver.

Based upon the answers to the court's questions from defendant and from counsel, the undersigned magistrate judge finds the waiver of rights under Rules 32 and 43 was knowing and voluntary.

### III. RECOMMENDATION

It is, therefore, the recommendation of the Magistrate Judge that Defendant’s guilty plea and waiver of presence at sentencing be **ACCEPTED**.

**SIGNED** on January 19, 2021.

A handwritten signature in black ink, appearing to read "Henry J. Bemporad", written over a horizontal line.

Henry J. Bemporad  
United States Magistrate Judge